

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 08-H-10868-RAP
	)	
MICHAEL ANTHONY GULLA,	)	DECISION AND ORDER SEALING
	)	CERTAIN DOCUMENTS
Member No. 80133,	)	
	)	
A Member of the State Bar.	)	

**Introduction**<sup>1</sup>

In this disciplinary proceeding, respondent Michael Anthony Gulla (respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for thirty (30) days, that execution of that period of suspension be stayed, and that he be placed on probation for one year subject to certain conditions.

**Significant Procedural History**

The State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent on April 18, 2008, in case no. 08-H-10868. The matter was assigned to the Honorable Pat McElroy.

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Following a status conference, Judge McElroy filed an order on November 25, 2008, referring this matter to the State Bar Court's ADP.

On November 26, 2008, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues.

On January 30, 2009, respondent submitted a declaration to the court which established a nexus between respondent's substance abuse issues and his misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in early March 2009. The Stipulation was received by the court on March 9, 2009.

Respondent entered into a long-term Participation Plan with the LAP on May 15, 2009.<sup>2</sup>

Following briefing by the parties, the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP, and (2) the discipline which would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP. Thereafter, the court memorialized in writing the alternative discipline recommendations in a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement); respondent executed a Contract and Waiver for Participation in the State Bar Court's ADP (Contract);<sup>3</sup> the court signed an order approving the parties' Stipulation; the parties' Stipulation was filed; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP commenced on August 31, 2009.

Effective August 31, 2009, this matter was reassigned to the undersigned judge.

On April 4, 2011, the court received a Certificate of One Year of Participation in the Lawyer Assistance Program - Substance Use, which reflects that the LAP was not aware of the use of any unauthorized substances by respondent for at least one year prior to April 4, 2011.

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<sup>2</sup> Respondent executed an amendment to the Participation Plan on August 5, 2009.

<sup>3</sup> The Confidential Statement and Contract were lodged on August 31, 2009.

On April 6, 2011, the court filed an order finding that respondent has successfully completed the ADP.

### **Findings of Fact and Conclusions of Law**

#### **I. Culpability Findings**

##### **Case No. 08-H-10868**

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

Respondent stipulated to a willful violation of rule 1-110 for failing to comply with the conditions attached to a public reproof administered by the State Bar pursuant to sections 6077 and 6078 and former rule 956 of the California Rules of Court.

#### **II. Aggravation<sup>4</sup>**

##### **Prior Record of Discipline (Std. 1.2(b)(i).)**

In aggravation, respondent has a prior record of discipline. Effective October 9, 2007, in case no. 05-C-04115, respondent was publicly reproofed with conditions. Discipline in this matter was based on a finding that respondent failed to follow the laws of the United States and California, in wilful violation of section 6068, subdivision (a).

#### **II. Mitigation**

##### **Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)**

Respondent displayed cooperation and candor to the State Bar during disciplinary proceedings in this matter.

##### **Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)**

Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of his wrongdoing by seeking assistance for his substance abuse issues.

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<sup>4</sup> All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

**Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)**

In addition, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter.

**Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.6, 1.7(a), 2.9 and *Conroy v. State Bar* (1990) 51 Cal.3d 799; *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697; and *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

**Recommendations**

It is hereby recommended that respondent Michael Anthony Gulla, State Bar Number 80133, be suspended from the practice of law in California for 30 days, that execution of that

period of suspension be stayed, and that he be placed on probation<sup>5</sup> for a period of one year subject to the following conditions:

During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;

Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;

Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the period of probation and no later than the last day of the probation period;

Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;

Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;

Unless respondent has been terminated from the Lawyer Assistance Program (LAP) prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and

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<sup>5</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.

Respondent must abstain from use of any alcoholic beverages and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.<sup>6</sup>

At the expiration of the period of probation, if Michael Anthony Gulla has complied with all conditions of probation, the 30-day period of stayed suspension will be satisfied.

### **Multistate Professional Responsibility Examination**

It is further recommended that Michael Anthony Gulla be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

### **Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **Direction Re Decision and Order Sealing Certain Documents**

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),<sup>7</sup> all other documents not

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<sup>6</sup> It is not recommended that respondent attend Ethics School, as he attended and successfully completed Ethics School on March 26, 2009.

<sup>7</sup> Effective January 1, 2011, new Rules of Procedure of the State Bar of California became effective.

previously filed in this matter are ordered sealed pursuant to rule 5.12 (former rule 23) of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: June 20, 2011.

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RICHARD A. PLATEL  
Judge of the State Bar Court